

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 252

June 13, 1995, 4:50 p.m.
Page S-8240 Temp. Record

TELECOMMUNICATIONS/FERC Regulation of PUHCA Companies

SUBJECT: Telecommunications Competition and Deregulation Act of 1995 . . . S. 652. Pressler motion to table the Bumpers/Daschle amendment No. 1348.

ACTION: MOTION TO TABLE AGREED TO, 52-48

SYNOPSIS: As reported, S. 652, the Telecommunications Competition and Deregulation Act of 1995, will amend telecommunications laws and reduce regulations in order to promote competition in the telecommunications industry by eliminating barriers that prevent telephone companies, cable companies, and broadcasters from entering one another's markets. It will also permit electric utilities to enter the cable and telephone markets. Judicial control of telecommunications policy, including the "Modified Final Judgment" regime, will be terminated.

The Bumpers amendment would make transactions between affiliates of companies regulated under the Public Utility Holding Company Act (PUHCA) subject to regulation by the Federal Energy Regulatory Commission (FERC) as well as to the Securities and Exchange Commission (SEC). Additionally, State utility commissions could exercise their jurisdiction over utility rates to the extent permitted by law regardless of SEC rulings on transactions between affiliates of PUHCA-regulated companies. If the FERC were to make a ruling in contradiction of an SEC ruling, the FERC ruling would be effective 1 year after its date of issuance.

Debate was limited by unanimous consent. Following debate, Senator Pressler moved to table the Bumpers amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

Argument 1:

Any company that owns more than 10 percent of a utility is defined as a public utility holding company. Holding companies that operate on a multi-state basis are known as registered public utility holding companies, and they must operate in accordance with

(See other side)

YEAS (52)			NAYS (48)			NOT VOTING (0)	
Republicans (51 or 94%)	Democrats (1 or 2%)		Republicans (3 or 6%)	Democrats (45 or 98%)		Republicans (0)	Democrats (0)
Abraham	Hutchison	Heflin	Campbell	Akaka	Inouye		
Ashcroft	Inhofe		Hatfield	Baucus	Johnston		
Bennett	Kassebaum		Jeffords	Biden	Kennedy		
Bond	Kempthorne			Bingaman	Kerrey		
Brown	Kyl			Boxer	Kerry		
Burns	Lott			Bradley	Kohl		
Chafee	Lugar			Breaux	Lautenberg		
Coats	Mack			Bryan	Leahy		
Cochran	McCain			Bumpers	Levin		
Cohen	McConnell			Byrd	Lieberman		
Coverdell	Murkowski			Conrad	Mikulski		
Craig	Nickles			Daschle	Moseley-Braun		
D'Amato	Packwood			Dodd	Moynihan		
DeWine	Pressler			Dorgan	Murray		
Dole	Roth			Exon	Nunn		
Domenici	Santorum			Feingold	Pell		
Faircloth	Shelby			Feinstein	Pryor		
Frist	Simpson			Ford	Reid		
Gorton	Smith			Glenn	Robb		
Gramm	Snowe			Graham	Rockefeller		
Grams	Specter			Harkin	Sarbanes		
Grassley	Stevens			Hollings	Simon		
Gregg	Thomas				Wellstone		
Hatch	Thompson						
Helms	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

the Public Utility Holding Company Act (PUHCA). In total, 14 such companies exist in America, serving some 50 million households. Transactions between affiliates of a holding company are regulated by the Securities and Exchange Commission (SEC). For example, if one affiliate wishes to buy coal from another affiliate, prior SEC approval of a contract allowing that sale is required. The Bumpers amendment would not change these regulatory requirements, but it would add greatly to them by requiring Federal Energy Regulatory Commission (FERC) approval of PUHCA affiliate transactions as well. The result would be that PUHCA affiliates would be whip-sawed between the competing regulatory requirements of these two Federal agencies. We firmly object to this ill-considered proposal.

The Ohio Power court case prompted the offering of this amendment. In that case, an electric utility owned by Ohio Power asked the FCC for permission to buy coal at cost from a coal company also owned by Ohio Power. The SEC agreed, and the contract went forward. Eleven years later, after reviewing the situation, the FERC claimed that the utility was paying too much for the coal and ordered the utility to lower its electricity rates. The court found that this decision was unfair to the company because it made the same transactions subject to the conflicting requirements of two separate regulatory bodies, which, due to statutory requirements, were constructed to arrive at their decisions at different points in the process. It is unfair for one Federal agency to approve a project, and then, after hundreds of millions of dollars have been invested, have another Federal agency disapprove it. Our objection is not to FERC regulation, nor is to SEC regulation; instead, our objection is to dual-regulation. The Bumpers amendment, in short, proposes an unworkable regulatory scheme, and on that basis should be rejected.

Argument 2:

Without going into the merits of the amendment, we suggest that it is procedurally unacceptable to agree to the Bumpers amendment on this particular bill. This issue should be considered as part of broader PUHCA reform, which is likely to be considered later this session. For those Senators who are concerned about the possibility that PUHCA companies entering the communications market will be able to engage in anti-competitive behavior in the interim, we refer them to the numerous safeguards in this bill. These safeguards are more than sufficient; FERC regulation may or may not be advisable, but it is unnecessary in terms of this debate. Therefore, we urge our colleagues to table the Bumpers amendment.

Those opposing the motion to table contended:

Twenty-five years ago the SEC gave approval for Ohio Power to buy coal from an affiliate, Southern Ohio Coal Company, supposedly at cost. Eleven years later, due to complaints from consumers and municipalities over the high rates they were being charged for electricity, the FERC investigated and found that Ohio Power was actually paying up to 100 percent more than the market price for coal from its sister affiliate. By inflating its costs, it was able to raise its rates and still only show a legal, FERC-approved profit. In reality, it was making obscene profits through its sister company. The FERC consequently ordered Ohio Power to lower its rates. Ohio Power refused, claiming that the FERC had no right to interfere because the SEC had approved its coal contract. The court, unfortunately, agreed. Subsequent appeals to the SEC to approve the coal contract have not been acted upon. As a result, consumers and municipalities are still being charged unfairly high electric rates. The Bumpers amendment would fix this situation by giving the FERC clear jurisdiction over PUHCA company transactions. If the FERC were to find that a company had unfairly high rates due to cross-subsidies it would have full authority to order lower rates. This amendment is timely because the bill before us will allow PUHCA companies to enter the telecommunications markets. If we do not pass the Bumpers amendment, PUHCA companies may soon make their electricity customers pay to subsidize their telecommunications ventures. Electric ratepayers will have to pay more, and all other telecommunications companies will be at a competitive disadvantage. We oppose these results, and thus support the Bumpers amendment.